REMARKS

The Office Action of August 22, 2006 has been carefully considered. Reconsideration of this application, as amended, is respectfully requested.

Turning now to the office action, claim 16 was apparently objected to for grammatical informality (lacking a period at the end). Claims 1-8 were rejected under 35 USC 102(b) as being anticipated by the Amercing Classic jar label (hereinafter "Label"). Claims 10, 12-18 and 20-23 were rejected under 35 USC 103(a) as being unpatentable over US 6,982,101 to Liu et al. ("Liu") in view of American Classic Label. Claims 9, 11, 19 and 24 were rejected as being unpatentable over Liu in view of Label and further in view of US 4,143,176 to Krisinski et al. ("Krisinski").

Claim 16 has been amended to add a period at the end and is believed to overcome the "objection" noted by the Examiner at page 5 of the Office Action.

Claims 1-8 were rejected under 35 USC 102(b) as being anticipated by the Amercing Classic jar label (Label). Applicants respectfully traverse the rejection. Independent claim 1 specifically recites organic peanut butter with the further limitations of at least about 90wt% organically grown, dry-roasted, ground peanuts; and from about 5wt% to about 7wt% of a non-hydrogenated organic oil, wherein a total fat concentration of the peanut butter is less than about 55wt%.

First, the Label fails to disclose the specific limitations set forth in amended independent claim 1. Second, the Label was produced and applied by the assignee of the instant application – Once Again Nut Butter, Inc. Furthermore, the date appearing on the label is less than one year prior to the priority date of the instant application. Thus, not only does the Label fail to disclose specific limitations set forth in the rejected claims, it is not available as a reference as the label further serves to verify Applicants' (Assignee's) work on reducing the invention to practice.

Claims 10, 12-18 and 20-23 were rejected under 35 USC 103(a) as being unpatentable over US 6,982,101 to Liu et al. (Liu) in view of American Classic Label. For the reasons set forth above, and incorporated herein, Applicants respectfully urge that the rejection's reliance on the Label is improper and that as a result *prima facie* obviousness has not been established.

Considering, *in arguendo*, the combination of Liu and the Label, Applicants respectfully submit that the teachings of Liu fail to set forth the specific limitations of claims 10, 12-18 and 20-23 as they are reflected in the above-amended claims. Moreover, as set forth in the enclosed affidavit, Applicants conceived of and reduced the claimed invention to practice before the priority date of Liu. Hence, Applicants respectfully urge that Liu is not available as a reference in the instant application.

Furthermore, with respect to the Examiner's urging that "nothing new is seen in using organically grown peanuts" Applicants respectfully note that Liu is directed to a nut butter spread and that the present invention is directed to organic peanut butter and a method of making organic peanut butter. On the other hand, the present invention results in an organic peanut butter that resists separation of oil therefrom. In setting forth the rejection the Examiner makes several statements that "nothing new" is seen. Applicants respectfully request that in the event such statements are employed in subsequent rejections, that the Examiner set forth the basis for the assertion, and more particularly establish where any references relied upon teach or suggest the recited limitations. Or, if the Examiner is taking "Official Notice" of allegedly well-known information, that the Examiner make such information of record for Applicants review.

In view of the arguments set forth above, Applicants respectfully traverse the rejections set forth as being unsupported, and request reconsideration of the amended claims and the allowance thereof.

Claims 9, 11, 19 and 24 were rejected as being unpatentable over Liu in view of Label and further in view of Krisinski. Once again, Applicants respectfully incorporate the arguments set forth in the traversal of the rejections above, and urge that the dependent claims are patentably distinguishable for the reasons set forth above relative to the independent claims from which they depend.

Considering, *in arguendo*, the combination of Krisinski in view of Liu and the Label, Applicants respectfully submit that the teachings of Krisinski, directed to processing of peanut skins, fails to set forth the specific limitations of claims 9, 11, 19 and 24. While Krisiniski does teach the addition of skins and only a 50-60% portion of the germ, Applicants respectfully maintain that the limitations of claims 9 and 19 are not taught. In fact Krisiniski indicates (col. 2, lines 25-41) that the additional step of homogenization was required to reduce undesireable characteristics, and that homogenization caused a

loss of flavor volatiles and introduced off flavors due to the high temperatures. Such statement would appear to teach away from the limitations recited in rejected claims 9, 11, 19 and 24. In view of the distinctions of the amended claims, Applicants respectfully traverse the rejections set forth as being unsupported, and request reconsideration of the amended claims and the allowance thereof.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,

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